SUPREME COURT OF INDIA

Dilip Mani Dubey

Vs.

SIEL Ltd.

C.A.No.7545-7546 of 2009

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

12.03.2019

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are directed against the final judgment and orders dated 29.11.2007 and 05.02.2008 passed by the High Court of Judicature at Allahabad in C.M.W.P. No.4435 of 1999 and C.M. Review Application No.1098 of 2008 respectively whereby the High Court allowed the writ petition filed by respondent No.1 herein and dismissed the review petition filed by the appellant herein.

2. A few facts need mention hereinbelow for the disposal of these appeals.

3. Pursuant to the industrial reference made by the State of U.P. under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act") to the Industrial Tribunal, Meerut for deciding the legality and correctness of the termination order of the appellant (workman) passed by respondent No.1 (employer), the Industrial Tribunal, by award dated 27.06.1998 (Annexure-P-8) answered the reference in appellant's favour and directed his reinstatement in service with payment of back wages in Adjudication Case No.137 of 1995.

4. Respondent No.1 (employer) felt aggrieved and filed a writ petition in the High Court of Allahabad against the aforementioned award.

5. By impugned order dated 29.11.2007, the High Court allowed the said writ petition and set aside the award of the Industrial Tribunal by answering the reference in favour of respondent No.1.

6. Against the said order, the appellant filed a review petition which was dismissed by the High Court by order dated 05.02.2008.

7. It is against the orders passed by the High Court in the writ petition and the review petition, the appellant(workman) has felt aggrieved and filed these appeals by way of

special leave in this Court.

8. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the writ petition and set aside the award of the Industrial Tribunal.

9. Heard Mr. Devvrat, learned counsel for the appellant and Mr. Debal Banerji, learned senior counsel for respondent No.1 and Mr. Shrish Kumar Misra, learned counsel for respondent No.2.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

11. The main question, which arose for consideration before the Industrial Tribunal and the High Court, was whether the appellant (workman) was in continuous service of respondent No.1(Employer) for one year as provided under Section 6-N of the U.P. Industrial Disputes Act.

12. Though the Industrial Tribunal had answered this question in favour of the appellant but the same was reversed and answered in favour of respondent No.1(Employer) by the High Court.

13. In our opinion, a finding on such question being a finding of fact, this Court cannot examine such question de novo by appreciating the whole evidence adduced by the parties again in these appeals. In our view, the High Court examined the matter in detail and the finding of the High Court on this question being a finding of fact is binding on this Court.

14. Learned counsel for the appellant (workman) placing reliance on the decision in *Sriram Industrial Enterprises Ltd. vs. Mahak Singh & Ors*[1]., and referring to the provisions of the UP Industrial Disputes Act contended that the issue was not properly decided by the High Court.

15. According to learned counsel, firstly, the High Court erred in travelling in the facts of the case in its writ jurisdiction which it could not have done for want of limited jurisdiction; and secondly, keeping in view the law laid down in Sriram Industrial Enterprises Ltd.'s case (supra), the award passed by the Industrial Tribunal should have been upheld as being just and proper.

16. We do not agree with this submission. In our opinion, the High Court, though took note of the factual matrix and examined the issue in its proper perspective with reference to the case set up by both the parties, rightly came to a conclusion that the appellant (workman) did not work continuously for one year with respondentNo.1(employer).

17. This question, we cannot now again examine de novo in our appellate jurisdiction under Article 136 of the Constitution. It is more so when we find that the finding on this question is neither against any evidence adduced by the parties nor against any provision of

law and nor it is perverse.

18. So far as the decision in Sriram Industrial Enterprises Ltd. (supra), which is relied on by the learned counsel for the appellant, is concerned, suffice it to say, the same, in our view, is distinguishable on facts. We, therefore, find no ground to place reliance on this decision to set aside the impugned order.

19. We, however, find that the High Court despite setting aside the award of the Industrial Tribunal, rightly directed that whatever amount, which has so far been paid to the appellant (workman) by respondent No.1(employer) in compliance with the order passed under Section 17-B of ID Act proceedings during pendency of the litigation, the same will not be recoverable from the appellant on the strength of the impugned order. According to learned counsel for respondent No.1(employer), this amount is quite a substantial one and is more than two lacs. Be that as it may.

20. Such direction issued by the High Court against respondent No.1(employer), in our view, is in conformity with the law laid down by this Court in that behalf.

21. Indeed, this Court has held that the proceedings under Section 17-B of ID Act are independent proceedings in nature and are not dependent upon the final order passed in the main proceedings.

22. It is ruled that if the Court/Tribunal, eventually upholds the termination order as being legal against the workman, yet the employer will have no right to recover the amount already paid by him to the delinquent workman pursuant to order passed under Section 17-B of the ID Act during pendency of these proceedings [see *Dena Bank vs. Kirtikumar T. Patel*[2]*, Dena Bank vs. Ghanshyam*[3]*, and Rajeshwar Mahto vs. Alok Kumar Gupta*[4].

23. The appellant should, therefore, feel satisfied with such order that though he lost the matter and indeed rightly yet he received substantial amount during pendency of this litigation, which is rightly not challenged by respondent No.1(Employer) in appeal.

24. In the light of the foregoing discussion, we find no merit in these appeals. The appeals fail and are accordingly dismissed.

Judgment Referred.

[1]*(2007) 4 SCC 0094*
[2]*(1999) 2 SCC 0106*
[3]*(2001) 5 SCC 0169*
[4]*(2018) 4 SCC 0341*